

Senate Select Committee on Intelligence

Committee Study of the Central Intelligence Agency's Detention and Interrogation Program



Additional Views

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**SENATOR
ROCKEFELLER
ADDITIONAL
VIEWS**

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Senator John D. Rockefeller IV – Additional Views

The Senate Intelligence Committee's entire Study on the CIA's Detention and Interrogation Program is the most in-depth and substantive oversight initiative that the Committee has ever undertaken, and it presents extremely valuable insights into crucial oversight questions and problems that need to be addressed at the CIA.

Moreover, this Study exemplifies why this Committee was created in the first place - following the findings of the Church Committee nearly 40 years ago - and I commend Chairman Feinstein for shepherding this landmark initiative to this point.

It is my hope and expectation that beyond the initial release of the Executive Summary and Findings and Conclusions, the entire 6,800 page Study will eventually be made public with the appropriate redactions. Those public findings will be critical to fully learning the necessary lessons from this dark episode in our nation's history, and to ensuring that this never happens again.

It has been a long, hard fight to get to this point. Especially in the early years of the CIA's Detention and Interrogation Program, it was a struggle for the Committee to get the most basic information - or any information at all - about the program.

The Committee's Study of the Detention and Interrogation Program is not just the story of the brutal and ill-conceived program itself. This Study is also the story of the breakdown in our system of governance that allowed the country to deviate, in such a significant way, from our core principles.

One of the profound ways that breakdown happened was through the active subversion of meaningful congressional oversight - a theme mirrored in the Bush Administration's warrantless wiretapping program during the same period.

As a matter of my own history with this issue, I first learned about some aspects of the CIA's Detention and Interrogation Program in 2003, when I became Vice Chair of the Committee. At that point, and for years after, the CIA refused to provide me with additional information I requested about the program or share information regarding the program with the full Committee. The briefings I received provided little or no insight into the CIA's program. Questions or follow up requests were rejected, and at times I was not allowed to consult with my counsel or other members from my staff.

It was clear that the briefings were not meant to answer my questions, but were intended only to provide cover for the Administration and the CIA. It was infuriating to realize that I was part of a box checking exercise the Bush Administration planned to use - and later did use - so they could disingenuously claim that they had "fully briefed Congress."

In the years that followed, I fought - and lost - many battles to obtain credible information about the Detention and Interrogation Program. As Vice Chair I tried to launch a comprehensive

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investigation into the program, but that effort was blocked. Later, in 2005, when I fought for access to over 100 specific documents cited in the Inspector General report, the CIA refused to cooperate.

The first time the full Senate Intelligence Committee was given any information about the CIA's Detention and Interrogation Program was September 2006. This was years after the program's inception, and the same day President Bush informed the public of the program's existence.

The following year, when I became Chairman, the new Vice Chairman, Kit Bond, agreed with me to push for significant additional access to the program – including Senators' access to our staff's counsel on these matters. We finally prevailed and got this access, which enabled us to have much needed hearings on the program, and we did. As Chairman, I made sure we scrutinized it from every angle. However, the challenge of getting accurate information from the CIA persisted.

In the same time period, I also sent two Committee staffers to begin reviewing cables at the CIA regarding the agency's interrogations of Abu Zubaydah and al-Nashiri. I firmly believed we had to review those cables, which are now the only source of important historical information on this topic because the CIA destroyed its videotapes of the interrogation sessions. The CIA did this against the explicit direction of the White House and the Director of National Intelligence.

The investigation I began in 2007 grew under Chairman Feinstein's dedication and tremendous leadership into a full study of the CIA's Detention and Interrogation Program. The more the Committee dug, the more it found, and the results we uncovered are both shocking and deeply troubling.

First, the Detention and Interrogation Program was conceived by people who were ignorant of the topic and made it up on the fly based on the untested theories of contractors who had never met a terrorist or conducted a real-world interrogation of any type.

Second, it was executed by personnel with insufficient linguistic and interrogation training, and little if any real-world experience.

Third, it was managed incompetently by senior officials who paid little or no attention to crucial details, and it was rife with troubling personal and financial conflicts of interest among the small group of CIA officials and contractors who promoted and defended it.

Fourth, it was physically severe, far more so than any of us outside the CIA ever knew.

Finally, its results were unclear at best, but it was presented to the White House, the Department of Justice, the Congress, and the media as a silver bullet that was indispensable to "saving lives." In fact, it did not provide the intelligence it was supposed to provide, or that CIA officials argued it provided. To be perfectly clear, these harsh techniques were not approved by anyone – ever – for the low-bar standard of learning "useful information" from detainees. These techniques were approved because Bush Administration lawyers and officials were told, and believed, that these

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coercive interrogations were absolutely necessary to elicit intelligence that was unavailable by any other collection method and would save American lives. That was simply not the case.

Nevertheless, for all of the misinformation, incompetence, and brutality in the CIA's program, the Committee's Study is not, and must not be, simply a backward looking condemnation of past mistakes. The Study presents a tremendous opportunity to develop forward looking lessons that must be central to all future intelligence activities.

The CIA developed the Detention and Interrogation Program in a time of great fear, anxiety and unprecedented crisis; but it is at these times of crisis when we need sound judgment, excellence, and professionalism from the CIA the most. When mistakes are made, they call for self-reflection and scrutiny. For that process to begin, we first have to make sure there is an accurate public record of what happened. The public release of the Executive Summary and Findings and Conclusions is a tremendous and consequential step toward that goal.

For some I expect there will be a natural temptation to reject, cast doubt on, or rationalize parts of the Study that are disturbing or embarrassing. Indeed the CIA program's dramatic divergence from the standards that we hold ourselves to is hard to reconcile. However, we must fight that shortsighted temptation to wish away the gravity of what this Study has found.

How we deal with this opportunity to learn, and improve, will reflect on the maturity of our democracy. As a country, we are strong enough to bear the weight of our mistakes, and as an institution, so is the CIA. We must confront this dark period in our recent history with honesty and critical introspection. We must draw lessons, and we must apply those lessons as we move forward. Although it may be uncomfortable at times, ultimately we will grow stronger, and we will ensure that this never happens again.

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ADDITIONAL VIEWS OF SENATOR WYDEN

Having served in Congress for nearly thirty-five years, and having served on the Intelligence Committee for over thirteen, I can easily say that this report is among the most detailed and comprehensive that I have ever seen. In addition, the investigation that produced it has been one of the most thorough and diligent that Congress has conducted during my tenure. I am proud to have been able to support it, and I would like to thank the extremely dedicated and talented staff who worked incredibly hard to produce it in the face of significant obstacles. Also, I commend Chairman Feinstein, and her predecessor Senator Rockefeller, for their leadership on the issue of interrogations.

However, I would be remiss if I let this opportunity go by without adding some brief additional thoughts that go beyond the scope of this report and touch on broader issues of secrecy and transparency. In my view certain aspects of the disturbing history surrounding coercive interrogations highlight broader problems faced by those who lead intelligence agencies, and those who oversee them.

In particular, I have long been concerned about the problems posed by government officials' reliance on what is effectively secret law. As I have said before, when laws are secretly interpreted behind closed doors by a small number of government officials, without public scrutiny or debate, it dramatically increases the likelihood of government agencies taking actions that the American public would not support.

Most Americans expect their government to gather information about genuine threats to national security and public safety, and they recognize that this information can sometimes be gathered more effectively when some details about how it is collected remain secret. But Americans also expect government agencies to operate at all times within the boundaries of publicly understood law. Americans in the 21st century don't expect their military and intelligence agencies to publish every single detail of their operations any more than they expected George Washington to publish his strategy for the Battle of Yorktown. But Americans absolutely expect that the law itself will not be secret – and as voters they have a need and a right to understand what government officials think the law actually means, so that they can decide whether particular laws need to be changed and ratify or reject decisions that their elected officials make on their behalf.

It is clear that a central problem with the CIA's secret detention and interrogation program was that it relied on secret interpretations of the law that went well beyond both the law's plain meaning and the public's understanding of what the law permitted. And this problem was unfortunately not confined to the CIA. During the same time period, the NSA relied on secret legal interpretations from the Department of Justice (and, later, the Foreign Intelligence Surveillance Court) as the basis for a massive expansion of its domestic surveillance activities. Both history and common sense made it clear that these secret interpretations of the law would not stay secret forever, and the predictable result was a robust public backlash and an erosion of confidence in US intelligence agencies and in government more generally.

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Another serious problem that can be seen in both the CIA interrogation case and the NSA surveillance case is the way that reliance on a secret body of law helped spawn a culture of misinformation, in which senior government officials repeatedly made inaccurate and misleading statements to the public and the press regarding intelligence agencies' authorities and activities. In addition to misleading the public about how the law was being interpreted, these statements often inaccurately characterized the effectiveness of these controversial programs – much of what CIA officials said about the effectiveness of coercive interrogations was simply untrue.

Beyond the problem of secret law, it is also clear that excessive secrecy within the government contributed to a troubling lack of oversight. This lack of oversight meant that bad decisions were not corrected, and shocking mistakes were often allowed to proliferate and be repeated. While some individual members of Congress and the executive branch pushed hard for more oversight of CIA interrogation activities, the argument that information about these programs needed to be kept tightly guarded even within the government was allowed to prevail.

This is an argument that has been frequently made when oversight bodies in Congress and the executive branch have attempted to learn more about potentially controversial secret programs. Intelligence officials will naturally tend to argue that it is necessary to limit access to information about sensitive intelligence collection methods to keep those methods from being publicly disclosed. If this imperative is not balanced against the need for informed and vigilant oversight of intelligence activities, then effective oversight can be stymied by excessive secrecy, leaving these agencies much more likely to make serious errors and repeat them.

In the case of the CIA interrogation program, of course, the fact that this impulse toward secrecy was allowed to outweigh the need for robust, well-informed oversight is particularly egregious because CIA officials were at times providing information to the press (including information that was often inaccurate and misleading) at the same time that congressional requests for information were being stonewalled. It is an unfortunate fact that intelligence agencies' legitimate mandate for secrecy has often been used to hide programs and activities from people who might criticize them.

Fortunately, the solution to these problems is straightforward, even if it isn't easy. Members of Congress and the executive branch must continually push for the information that they need to do their jobs, and intelligence officials must avoid taking actions that obstruct this important oversight. And everyone involved must remember that there is ultimately no substitute for oversight from the public itself, which is why all government agencies – even intelligence agencies – should constantly be pressed to make as much information available to the public as possible. Finally, everyone who values the legitimacy of our democratic institutions must remember that the government's understanding of laws, treaties and the Constitution shouldn't just be public when government officials find it convenient. This information should be public all the time, and every American should be able to find out what their government thinks the law means.

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The vast majority of the men and women who work at America's intelligence agencies are overwhelmingly dedicated professionals who make enormous sacrifices to help keep our country safe and free, and they should be able to do their jobs secure in the knowledge that they have the confidence of the American people. By remembering these principles and working hard to adhere to them, I believe that those of us who are lucky enough to serve in government can ensure the protection of both American security and American values, and give these men and women the confidence that they deserve.

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**SEN. UDALL ADDITIONAL VIEWS TO THE EXECUTIVE SUMMARY
OF THE COMMITTEE STUDY ON THE
CIA'S DETENTION AND INTERROGATION PROGRAM**

June 9, 2014

This summary of the Study of the CIA's Detention and Interrogation Program is over five years in the making and highlights the key facts and findings in the much more comprehensive, nearly 6700-page report that the Senate Select Committee on Intelligence voted to initiate in 2009. This Study has been rightly called one of the most significant examples of oversight in the history of the U.S. Senate. It is based on a documentary review of more than 6 million pages of CIA and other records, and raises critical questions about intelligence operations and oversight, many of which remain highly relevant today.

The Committee's Study details the numerous flaws in the CIA's Detention and Interrogation Program. Among them: It was allowed to be shaped and conducted by individuals who didn't understand what they were doing and who had a financial stake in representing the program as effective. It was run by personnel with insufficient training. It was managed incompetently by senior CIA personnel. The "enhanced interrogation techniques" were far more brutal than anyone understood. Perhaps most importantly, these techniques did not work. Nonetheless, the program was sold to the White House, the Department of Justice, the Congress, and the media as a necessary program that provided unique information that "saved lives."

The significance of the Committee Study lies in the words written in its pages. But the history of the Study itself is also an important story that needs to be told.

Chairman Feinstein, who has shouldered the greatest responsibility and deserves the greatest credit for seeing this project to completion, and former Chairman Rockefeller, who served as the Committee's ranking member and then Chairman during the time when the CIA was conducting its program, are best able to speak to the earliest days of the Study and the events that led the Committee to undertake this enormous task. And after five years of courageous leadership in pushing this Study forward, navigating partisan rancor and CIA obstacles, Chairman Feinstein can certainly speak most authoritatively to all the twist and turns on the road to the Study's release.

But as a newer member of the Committee, I also have a perspective to share. And I believe that the history of the CIA's program isn't complete without a full telling of the events that came after the program ended, to include this Committee's efforts – and mine – to complete and declassify the Study of the CIA's Detention and Interrogation Program.

As a new member on the Committee in 2011, I was briefed on the origins and status of the Study and began reading early drafts and discussing the way forward with Committee colleagues. I had always believed that the CIA's program – with its "enhanced interrogation techniques," renditions, and black sites – was a stain on our country's recent past. But I was deeply disturbed to learn specifics about the flaws in the program, the misrepresentations, the brutality. During this time, I also learned about the dedicated Committee staff who were working every day and late into the nights at the CIA-leased off-site facility, where they sifted through millions of CIA records, and in our Committee spaces in the Senate, where they continued to write the thousands of pages that would become the first comprehensive review of the CIA's program.

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By late 2012, the Study was largely complete. In December 2012, I supported the Chairman and other Committee colleagues in voting to approve the Study, which we then provided to the White House and Executive Branch agencies for "review and comment." The CIA took over six months to produce its comments on the Study, during which time I and other Committee members repeatedly requested that CIA personnel meet with Committee staff to discuss the report. The CIA declined all requests to meet with its oversight committee on this matter.

In January 2013, President Obama nominated John Brennan to serve as the next CIA director. I hoped that as a career CIA officer, Brennan would understand the opportunity before him to lead the Agency in correcting the false record that the Committee's Study uncovered and instituting the necessary reforms to restore the CIA's reputation for integrity and analytical rigor. During his nomination hearing, I stressed to Mr. Brennan that this Study isn't just about the past. Acknowledging the flaws of this program is essential for the CIA's long-term institutional integrity – as well as for the legitimacy of ongoing sensitive programs. The findings of this Study directly relate to how other CIA programs are managed today. The CIA cannot be its best unless it faces the serious and grievous mistakes of this program – to include the false representations made to policymakers and others – to ensure these mistakes never happen again.

I also expressed my belief to Mr. Brennan that the government has an obligation to the American people to face its mistakes transparently, help the public understand the nature of those mistakes, and correct them. I asked him whether he believes the CIA has a responsibility to correct any inaccurate information that was provided to the previous White House, the Department of Justice, Congress, and the public regarding the CIA's Detention and Interrogation Program. Mr. Brennan said yes.

Mr. Brennan has yet to make any corrections to the public record. Instead, the CIA engaged in efforts to obstruct and undermine the Committee's oversight efforts. In spring 2013, as the CIA prepared its comments on the Study, we heard through the public statements of unnamed current intelligence officials and named former officials – those who have a clear stake in preserving the myth of the program's value – that the CIA was highly critical of the Committee's report, believing it to be "political" and "biased."

In May 2013, still awaiting the CIA's promised response to the Committee Study, I wrote to President Obama, underlining the importance of correcting the public record if it was determined that inaccurate information had been conveyed to the American people by the U.S. government and urging a swift response from the CIA to the Committee Study. I received no reply.

On June 27, 2013, the CIA finally submitted its 122-page formal response to the Committee, though it was not the correction of the record that many of us hoped it would be. Instead, a CIA spokesman said that although the Agency "agrees with a number of the study's findings," the Study contained "significant errors." A White House spokeswoman noted "factual questions" about the Study. But the CIA only identified one factual error in its response – and it was one that had no impact on the report and was quickly corrected. More worrisome, the CIA continued to cling to false narratives about the effectiveness of the program in its written response – only admitting to the factual errors in its own response in meetings with Committee staff. The Committee requested that the CIA resubmit a written response reflecting corrections to the errors that the CIA acknowledged in meetings, but the CIA submitted no revised response. As such, the last document the CIA submitted to the Committee on this program continues to be riddled with factual errors and misstatements.

In July 2013, as a member of the Senate Armed Services Committee, I attended the nomination hearing of Stephen Preston – then CIA General Counsel – to be General Counsel at the Department of Defense. His

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answers to questions regarding his role in and support of the CIA's June 27, 2013, response concerned me enough that I asked him to answer additional questions for the hearing record. His answers to my additional questions contrasted with statements provided by the CIA in its response to the Committee Study, admitting that the CIA's efforts "fell well short" of current standards for providing information to its oversight committees, as is required by law; that CIA briefings to the Committee included "inaccurate information"; that the CIA's efforts had again fallen "well short of our current practices when it comes to providing information relevant to [the Justice Department's Office of Legal Counsel]'s legal analysis"; and that by reviewing the CIA's records, it would be possible to determine whether information provided after the use of brutal interrogation techniques had already been obtained from other sources, something the CIA continued to officially claim was "unknowable."

But Stephen Preston wasn't the only CIA official to disagree with the standard CIA narrative on its detention and interrogation program. As I discovered in late 2013, an internal CIA review of the program initiated under former Director Panetta corroborates some of the significant findings of the Study and acknowledges significant errors made during the course of the CIA's program – but this internal review conflicts with the CIA's own official response provided to the Committee, which denies or minimizes those same errors.

As Chairman Feinstein so eloquently outlined in her floor speech on March 11, 2014, drafts of the so-called Panetta review had been provided to Committee staff years before – apparently unknowingly or mistakenly by the CIA. When the disparity between its conclusions and the CIA's June 27, 2013, response to the Committee became clear, Committee staff grew concerned that the CIA was knowingly providing inaccurate information to the Committee in the present day – which would be a serious offense and a deeply troubling matter for this Committee, the Congress, the White House, and our country. To preserve evidence of this potential offense, Committee staff securely transported a printed portion of the draft Panetta review from the CIA-leased facility to the Committee's secure offices in the Senate.

At the December 2013 nomination hearing of Caroline Krass – who was slated to replace Preston as the CIA's top lawyer – I asked Ms. Krass to ensure that a final copy of this review would be made available to the Committee, since it raised fundamental questions about why a review the CIA conducted internally years ago – and never provided to the Committee – is so different from the CIA's formal written response and from the many public statements of unnamed and former CIA officials. Chairman Feinstein had made the same request in an earlier letter. Although the Committee had a draft of the review already in its possession, I believed then – as I do now – that it was important to make public the existence of this internal document and its conclusions and to obtain a final version.

In early January 2014, I wrote a letter to President Obama reiterating my request that the final draft of the Panetta review be provided to the Committee. The CIA needed to reconcile the fact that it agreed with the Committee behind closed doors with its continued CIA criticisms of the Study in public. But instead of coming clean, the Agency chose to double down on its denials.

In early March 2014, I wrote another letter to President Obama, restating my interest in the final Panetta review. In that letter, I also alluded to "unprecedented action" that the CIA had recently taken against the Committee, calling it "incredibly troubling for the Committee's oversight responsibilities and for our democracy." As news reports made clear on March 4, 2014, and Chairman Feinstein explained further in her March 11, 2014, speech, that action was the CIA's unauthorized search of the Committee's computers at the off-site facility – a search conducted out of concern that Committee staff already had access to the Panetta review, a document they were fully cleared to see. More troubling, despite admitting to the

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Committee that the CIA conducted the search, Director Brennan publicly referred to “spurious allegations about CIA actions that are wholly unsupported by the facts.”

The CIA never asked the Committee whether or how it had access to the review conducted under Director Panetta. Instead, without notifying the Committee, the CIA searched the Committee computers that the agency had agreed were off limits, and in the process, the CIA may have violated multiple provisions of the Constitution (including both the Speech and Debate Clause and the Fourth Amendment) as well as federal criminal statutes and Executive Order 12333. Director Brennan declined to respond to further questions about the CIA’s actions to the Committee, and instead, the CIA’s acting general counsel – who was involved in the 2005 decision to destroy the CIA’s interrogation videotapes – filed a crimes report with the Department of Justice about the Committee staff’s actions to preserve the Panetta review documents. The CIA’s Inspector General also referred the CIA search to the Department of Justice, and the Senate Sergeant at Arms continues to conduct a forensic review of the Committee’s computers.

The matter of the Panetta Review remains unresolved, but serves to emphasize the fact that the CIA is unwilling or unable to submit itself to honest and transparent oversight by the Congress. The agency not only hasn’t learned from its mistakes of the past, but continues to perpetuate them.

Meanwhile, even as the threat of criminal prosecution and inquiry persisted, Committee staff continued to work at the direction of the Members in preparing the Committee Study for declassification and release. After months spent incorporating comments from the CIA’s June 27, 2013, response – to ensure that the CIA’s views on the Study’s findings were represented – Committee staff completed a revised Committee Study that grew from 6,300 pages to nearly 6,700 pages. On April 3, 2014, in a bipartisan 11 – 3 vote, the Committee moved to submit for declassification the nearly 500-page Executive Summary and 20 findings and conclusions of the Committee Study on the CIA’s Detention and Interrogation Program.

This was a proud day for the Committee – for the Chairman who led this vital effort, for other members who worked alongside her, and for Committee staff, who put their lives on hold for years while completing this seminal work. This was also a proud day for the American people – who deserve to understand this dark chapter in our history and why it is still relevant today.

The American people also deserve to read as much of this history as possible. That is why the Chairman and I and many of our colleagues called repeatedly for the fullest possible declassification of the Executive Summary and the Study’s findings and conclusions, with only redactions as necessary for real national security concerns, not to avoid embarrassment. The American people deserve a proper and accurate accounting of the history, management, operation, and effectiveness of this program – and they have the right to know what the government has done on their behalf. It is my hope that we can soon release not just the Executive Summary, but the entire 6,700 pages of the Committee’s Study, for the American people.

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Additional Views of Senator Martin Heinrich

In January 2009, President Obama signed Executive Order 13491, limiting interrogations by any American personnel to the guidelines in the Army Field Manual, and reinforcing the commitment that prisoners in U.S. custody are entitled to rights under the Geneva Conventions. This officially ended a dark period in American history that, in reality, had already effectively collapsed under the weight of poor policy decisions, ineffectiveness, bad management, and public disclosures.

I came to this Committee believing that the press accounts and books I read had adequately prepared me for what took place in this program. I was wrong.

Compounding this is the fact that my ignorance was not unique: the CIA deliberately kept the vast majority of the Senate and House Intelligence Committees in the dark until the day the president revealed the detention and interrogation program to the world in 2006 – four years after it began.

Even then, misrepresentations to the Committee about the effectiveness of the CIA's detention and interrogation program continued, in large part because the CIA had never performed any comprehensive review of the effectiveness of the program or the actions of its officers. Myths of the "effectiveness" of torture have been repeated in the press, perpetrating the fable that this was a necessary program that "saved lives." My hope is this meticulously detailed, near 7,000-page Committee study finally puts those lies to rest.

Those who were responsible for the CIA's detention and interrogation program will continue to exploit public ignorance of what took place in the program to argue that the study is one-sided or biased, or that it lacks important details or context. In the course of their efforts, they will misrepresent what is or is not in the study, while selectively picking through the executive summary in an effort to support their arguments.

However, the full study contains far more information and detail than could ever be captured in an executive summary. That is why I firmly believe the release of the executive summary should not be the last step in this process, but the first. It is my hope that someday soon there will be a public release of the full Committee study. If this deplorable chapter is to truly be closed and relegated to history, the full study should be declassified and released. The president has that authority, and I hope he will exercise it.

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This study represents years of hard work by Members and staff who faced a number of obstacles in completing the work: the CIA taking years to dump millions of unsorted documents in a massive database while resisting requests for additional information; the executive branch withholding thousands of pages of documents from the Committee; and current and former officials anonymously misrepresenting the contents and the findings of the study in the press. The list could go on. The fact that this study was finished is a testament to the dedication of Chairmen Rockefeller and Feinstein in deciding that oversight is worth it, regardless of how long it takes.

This is an objective and fact-based study. It is a fair study. And it is the only comprehensive study conducted of this program and the CIA's treatment of its detainees in the aftermath of the September 11 attacks.

The reality is that the president's signature on Executive Order 13491 is only valid until the next national crisis emerges and moves a well-meaning, but misguided president to rescind the order. It is worth remembering that years before this detention and interrogation program even began, the CIA had sworn off the harsh interrogations of its past; but in the wake of the terrorist attacks against the United States, it repeated those mistakes by once again engaging in brutal interrogations that undermined our nation's credibility on the issue of human rights, produced information of uneven – and often questionable – value, and wasted millions of taxpayer dollars.

This study should serve as a warning to those who would make similar choices in the future: torture doesn't work. It is therefore my hope that Members of Congress will read this study and join me in the conclusion that we must never let this happen again. We need to shut the door on abusive interrogations completely through legislative action that leaves no loopholes, and no room for interpretation.

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Additional Views of Senator King

(U) I joined the Senate Select Committee on Intelligence in January 2013, approximately four years after President Obama issued an Executive Order to end the detention and interrogation program of the Central Intelligence Agency (CIA). As such, I was not involved in the inception and initial stages of the committee's review of the program. After carefully reading this study's lengthy executive summary, the CIA's response, and other relevant documents, it is clear to me that some detainees were subjected to techniques that constituted torture. Such brutality is unacceptable, and the misconduct on the part of some of the individuals involved in the use of enhanced interrogation techniques, which is documented in the study, is inexplicable. Based upon this review, it appears to me that the enhanced interrogation techniques were not effective in producing the type of unique and reliable information claimed by the agency's leadership, and should never again be employed by our government.

(U) In the course of conducting vigorous oversight with respect to this program, it is also important to bear in mind several points. First, in the wake of the September 2001 attacks, our government was inundated with endless leads to track down. There was genuine fear and uncertainty about follow-on strikes, which may explain, but not excuse, the actions that are the subject of this study. Second, we live in a dangerous world with all-to-real enemies and I believe firmly that intelligence is our nation's first line of defense against terrorism. As such, the CIA and other intelligence agencies are vital to keeping us safe and the disturbing nature of the study's findings should not be used to undermine our overall intelligence enterprise. Lastly, it should be understood that those responsible for the mismanagement and misconduct associated with the detention and interrogation program are not representative of the many dedicated professionals serving our nation, often in anonymity, at the CIA. Having met with many CIA officers, I have great respect for their intellect, dedication, courage, and sacrifice.

(U) Despite the unquestionable professionalism of the vast majority of CIA personnel, the study demonstrates that the detention and interrogation program was mismanaged, that some within the leadership of the CIA actively impeded congressional oversight, and that agency officials misrepresented the program's effectiveness.

~~(S)~~ The study finds that CIA headquarters failed to keep accurate records on those it detained and placed individuals with limited experience in senior detention and interrogation roles. Even after a detainee died of hypothermia at a detention facility in November 2002, many of these practices continued without adequate oversight. In its response to the study, the CIA states that delegating management of this particular facility to a junior officer "was not a prudent managerial decision given the risks inherent in the program."¹ It is difficult to imagine a greater understatement of what occurred. More accurately, in the words of one of the CIA's senior interrogators, the program was "a train wreck [sic] waiting to happen."²

¹ Central Intelligence Agency's Response to the SSCI's Study of the CIA's Detention and Interrogation Program, June 27, 2013, Response to Conclusion 15, p. 42.

² SSCI Study of the CIA's Detention and Interrogation Program, April 3, 2014, Executive Summary, p. 68.

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Page 1 of 3

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(U) Of the many examples of impeding congressional oversight documented in the study, none is more striking than the decision by CIA leaders to destroy videotapes of CIA interrogations out of a concern that Congress might discover evidence of misconduct and brutality. There is no excuse for this decision and those involved should no longer be associated with the CIA or the United States government.

~~(S)~~ Most significantly, the study finds that the CIA's justification for the use of enhanced interrogation techniques rested on inaccurate claims of their effectiveness. In its official response to the study, the CIA contradicts many of its previous claims of unqualified effectiveness by arguing that it is now "unknowable" whether the same information could have been acquired without the use of enhanced interrogation techniques and further contends that its past assertions were "sincerely believed but inherently speculative."³ Yet in the long and unfortunate history of this program, no one in the CIA's leadership expressed such an equivocal view of the techniques' effectiveness. What was once certain is now "unknowable;" this migration of rationales underlines for me the magnitude of the prior misrepresentations.

~~(S)~~ I have to assume that in many cases the representations of effectiveness were believed by the individuals who made them. However, the CIA also admits in its response that it never attempted to develop a "more sustained, systematic, and independent means by which to evaluate the effectiveness of the approaches used with detainees."⁴ It states further that its reviews of the program's effectiveness were "heavily reliant on the views of the practitioners" – including the contract psychologists who designed and executed the techniques.⁵

(U) If such a sustained, systematic, and independent evaluation was impractical, as the CIA now claims, then it follows that the CIA's assertions about the effectiveness of such techniques were largely guesswork. In the end, policymakers based their decisions about a program so at variance with our past practices and values on anecdotal information, rather than on a verifiable process. This, in my opinion, is among the seminal failings of the program and the CIA's leadership during this period.

(U) Finally, I am deeply disturbed by the implications of the study for the committee's ability to discharge its oversight responsibility. The core of the oversight function rests in large part upon the interaction of our committee with representatives of the various intelligence agencies, most particularly the CIA. Because it appears from the study that the committee was continuously misled as to virtually all aspects of this program, it naturally raises the extremely troubling question as to whether we can trust the representations of the agency in connection with difficult or sensitive issues in the future. If our principal oversight approach is based on frank and open communication with the CIA's leadership, and we cannot fully rely upon the answers we receive, then the entire oversight function is compromised.

³ Central Intelligence Agency's Response to the SSCI's Study of the CIA's Detention and Interrogation Program, June 27, 2013, Response to Conclusion 9, p. 23.

⁴ Central Intelligence Agency's Response to the SSCI's Study of the CIA's Detention and Interrogation Program, June 27, 2013, Response to Conclusion 10, p. 24.

⁵ Central Intelligence Agency's Response to the SSCI's Study of the CIA's Detention and Interrogation Program, June 27, 2013, Response to Conclusion 10, p. 25.

UNCLASSIFIED

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(U) As a committee, we should discuss this matter to determine if additional steps may be necessary to ensure that we are getting accurate information. I believe that our solemn responsibility to provide vigilant legislative oversight over the intelligence activities of the United States requires serious consideration of this problem.

(U) I agree with my colleagues in the minority who note that the Department of Justice's decision to begin a criminal investigation in 2009 prevented the committee from conducting most interviews and required the study to rely mainly on documents provided by the CIA. I am also disappointed that the study could not utilize the expertise of the minority through a joint review, as has been the committee's practice. While I believe the study is accurate, this is a fundamental lesson that will inform my approach to the committee's work in the years ahead.

(U) In conclusion, upon joining the committee in 2013 I endeavored to undertake a thorough review of the study, the CIA's response, and other relevant documentation. I also discussed this matter with Democrats and Republicans on the committee, the staff members involved in writing the study and the minority staff, the CIA personnel who drafted the agency's response, a former senior military interrogator, current CIA officers bravely serving our nation in harm's way, a former top FBI official, and numerous Maine people – including human rights experts and leaders of the religious community.

(U) Based upon this review, I voted to approve declassification of the study because I believe our nation's reputation as a beacon of openness, democratic values, human rights, and adherence to the rule of law is at stake. Our credibility – and ultimately our influence – in the world is dependent upon this reputation, and it is our obligation to admit when we fail to meet America's high standards. I believe we can protect intelligence sources and methods and still declassify a significant portion of the study to accomplish this goal.

(U) As then Secretary of State Colin Powell said in 2004, following the scandals at Abu Ghraib prison,

“Watch America. Watch how we deal with this. Watch how America will do the right thing. Watch what a nation of values and character, a nation that believes in justice, does to right this kind of wrong. Watch how a nation such as ours will not tolerate such actions.”⁶

(U) In the last analysis, America's real power is based upon our values and how we put those values into practice. As with any individual – or great nation – we will occasionally stumble, but when we do, we acknowledge our failings – as we have in this case – and move on, true to ourselves and to the better angels of our nature.

ANGUS S. KING

⁶ Powell, Colin. “Commencement Address.” Wake Forest University. 17 May 2004.

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Page 3 of 3

UNCLASSIFIED

UNCLASSIFIED

**SENATOR
COLLINS
ADDITIONAL
VIEWS**

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Additional Views of Senator Collins

(U) The use of torture is deplorable and is completely contrary to our values as Americans. For as long as I have served in the Senate, I have cast votes in opposition to torture and inhuman treatment of detainees. I cosponsored and voted in favor of Senator John McCain's Detainee Treatment Act of 2005, which banned "cruel, inhuman, and degrading" treatment of any prisoner in the custody of any U.S. government agency, and I supported the Military Commissions Act of 2006, which bolstered the Detainee Treatment Act's prohibition on abusive interrogations.

(U) The Senate Select Committee on Intelligence (SSCI) *Review of the Central Intelligence Agency's (CIA's) Detention and Interrogation Program* devotes much of its report to supporting its judgment that enhanced interrogation techniques (EITs) were ineffective in acquiring intelligence. While I agree with the Central Intelligence Agency's (CIA's) current position that it is "unknowable" whether or not its "enhanced interrogation techniques" elicited significant intelligence that would not otherwise have been obtained, the fact remains that torture is wrong. The Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, which the United States ratified in 1994, is clear: "No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture."

(U) The method by which the SSCI report was produced was unfortunate, to say the least, and will cause many to question its findings. In my years of service on the traditionally bipartisan Homeland Security and Governmental Affairs Committee (HSGAC), the Senate's chief oversight committee, the congressional reports I have coauthored have almost always been the result of collaborative, bipartisan investigations. Indeed, even a subject as controversial as the treatment of detainees can lead to the production of a strong bipartisan report, as demonstrated by the Senate Armed Services Committee's *Inquiry into the Treatment of Detainees in U.S. Custody* drafted by Chairman Carl Levin and Ranking Member John McCain and approved by voice vote in November 2008. When I joined the Senate Select Committee on Intelligence in January 2013, I was disappointed to learn that the Committee's investigation into the CIA's Rendition, Detention, and Interrogation (RDI) program had not been conducted in a similarly bipartisan manner.

(U) Since joining the Committee, I have sought to compensate for this missed opportunity and have encouraged greater dialogue among the CIA and the majority and minority Committee staff members, and extensive conversations have indeed occurred. Following the delivery of the CIA's feedback to the Committee's report in June 2013, I asked that we hold a hearing prior to a vote to declassify this report that would have included CIA witnesses. Such a hearing would have permitted a robust and much-needed debate about the claims made in the report compared to the rebuttals in the Agency's formal response. Unfortunately, this hearing did not occur.

(U) In the absence of a formal Committee hearing, I was briefed directly by veteran, career CIA analysts who provided feedback on the report's factual accuracy and analytic quality. Two Senators from both sides of the aisle joined me in this worthwhile briefing.

(U) I also sought to improve the report by recommending revisions and greater precision in the Review's Findings & Conclusions, and I appreciate Chairman Feinstein incorporating some of my edits.

(U) In addition to the partisan nature of the staff investigation, the report has significant intrinsic limitations because it did not involve direct interviews of CIA officials, contract personnel, or other Executive branch personnel. John Rizzo, one of the chief architects of the program, has stated publicly that he would have been happy to be interviewed, and he said a number of his colleagues would have as well. The absence of interviews significantly eroded the bipartisan cooperation that existed when the SSCI Review began and calls into question some of the report's analysis.

(U) The lack of interviews violated the Committee's bipartisan Terms of Reference that were approved by an overwhelming 14-1 vote in March 2009. The Terms of Reference describe the purpose, scope, and methodology of the Review, and they include the following statement: "The Committee will use the tools of oversight necessary to complete a thorough review including, but not limited to, document reviews and requests, interviews, testimony at closed and open hearings, as appropriate, and preparation of findings and recommendations." Yet, there were no interviews, no hearings, and no recommendations. By comparison, the SASC's 2008 *Inquiry into the Treatment of Detainees in U.S. Custody* included 70 interviews, written responses from more than 200 individuals in response to written questions, two hearings, and at least two subpoenas.

(U) Documents never tell the full story and lack context. As the former Chairman or Ranking Member of the Senate's chief investigative committee for ten years, I found that interviews were always key sources of information for every investigation our Homeland Security Committee conducted. In the 2012 HSGAC investigation into the attacks in Benghazi, for example, we discovered one of our most alarming findings in a discussion with the Commander of U.S. Africa Command, General Carter Ham. We learned that he was unaware of the presence of CIA officers in Benghazi, despite the fact that his Command had responsibility to prepare for the evacuation of U.S. government personnel.

(U) The bipartisan Terms of Reference also called for the production of policy recommendations, but not one is included in the Review's Findings & Conclusions or its Executive Summary. Ironically, it was the CIA, rather than the Committee, that first developed recommendations to address the mismanagement, misconduct, and flawed performance that characterized too much of the CIA's Detention & Interrogation program. I have identified several recommendations that should be implemented as soon as possible.

(U) Despite these significant flaws, the report's findings lead me to conclude that some detainees were subject to techniques that constituted torture. This inhumane and brutal treatment never should have occurred.

(TS) [REDACTED] (NF) The Review also raises serious concerns about the CIA's management of this program. I particularly agree with its conclusions that the CIA was not prepared to conduct the RDI program, that the CIA failed to conduct a comprehensive evaluation

of the effectiveness of the use of EITs, that the CIA rarely held officers accountable for misconduct and mismanagement related to the RDI program, and that the CIA allowed a conflict of interest to exist among contractors responsible for too much of the RDI program. Is there any function that could be more inherently governmental than the questioning of high-level al Qaeda detainees in CIA custody? Yet, the CIA relied heavily on contractors for its RDI program and even had contractors evaluate the program.

(U) The Review's most significant finding deals with the ineffectiveness of EITs in collecting valuable intelligence. As a Senator who strongly opposes torture, I would have welcomed a well-documented finding that reached this judgment. Unfortunately, the evidence cited does not sustain the Review's categorical judgment that EITs were ineffective at acquiring valuable intelligence.

(U) For example, the Review concedes that some detainees were subject to EITs so soon after their capture that it is impossible to determine whether the information they provided could have been obtained through non-coercive debriefing methods. Here the report gets it right: there is no way to know what information these particular detainees would have provided without the use of EITs because the detainees were not afforded that opportunity for very long. Yet, the report draws a different and much more definitive conclusion: EITs were categorically ineffective at acquiring valuable intelligence.

(TS/ [REDACTED] /NF) It is also striking to me that two highly experienced public servants who are both widely respected for their integrity and impartiality, examined the program at two different times, independently of each other, and they both rendered the same verdict regarding the effectiveness of EITs. In 2011, former CIA Director Leon Panetta, and in 2005, a well-regarded [REDACTED] both took the position that we simply can never know for sure if the information obtained from detainees who were subjected to EITs would have been obtained through other non-coercive means.

(TS/ [REDACTED] /NF) A letter from then-Secretary of Defense Leon Panetta to Senator John McCain sums up his conclusion on the effectiveness of EITs with respect to the Osama bin Laden raid: "Some of the detainees who provided useful information about the facilitator/courier's role had been subjected to enhanced interrogation techniques. Whether those techniques were the 'only timely and effective way' to obtain such information is a matter of debate and cannot be established definitively." According to the Review's own Executive Summary, [REDACTED] said the following about the effectiveness of the CIA's enhanced interrogation techniques: "here enters the epistemological problem. We can never know whether or not this intelligence could have been extracted through alternative procedures."

(U) It bears repeating that torture need not be ineffective to be wrong. The United States correctly answered the question of whether torture should be prohibited when our nation ratified the Convention against Torture in 1994. The prohibition against torture in both U.S. law and international law is not based on an evaluation of its efficacy at eliciting information. Rather, the prohibition was put in place because torture is immoral and contrary to our values.

(U) There are three findings about the RDI program that warrant attention because they provide important perspective and context about the CIA program.

(U) First, even as the mistreatment of detainees was occurring, senior CIA officials repeatedly sought legal approval from the Department of Justice (DOJ) in an effort to make sure each the EITs employed by CIA officers did not constitute torture. For example, the CIA suspended the program and/or sought legal approval prior to conducting EITs on Abu Zubaydah and several times afterwards: in 2004 after a new attorney in DOJ's Office of Legal Counsel (OLC), Jack Goldsmith, said the Department had never formally opined on whether EITs met constitutional standards, in 2005 when another attorney in OLC assessed OLC had not provided a substantive ruling on whether certain EITs violated portions of the Convention Against Torture, after passage of the Detainee Treatment Act of 2005, and after the Supreme Court's decision in *Hamdan v. Rumsfeld* and the passage of the Military Commissions Act of 2006.

(U) Second, the problems of the detention program were frequently whole-of-government failures, not just CIA's alone. Legal opinions issued by OLC are almost never withdrawn, especially by the same Administration that issued them. Yet, that is exactly what happened in this case. Why was the original legal analysis by the Department of Justice so inadequate regarding such an important issue? CIA should not have made definitive claims about the effectiveness of EITs, but independent of the material facts represented by CIA, the withdrawal of the original August 1, 2002, OLC classified legal analysis demonstrated that it was too flawed and lacked the legal rigor necessary to serve as the basis for a controversial and questionable program.

(~~TS~~ [REDACTED] /~~NF~~) Third, the Review's Findings & Conclusions understate the degree to which the U.S. Government failed to focus on an end game for CIA detainees in the program by not moving them to military installations, even as the CIA repeatedly sought to move the detainees out of its custody in 2005 after many had ceased producing valuable intelligence.

(U) In the absence of recommendations in the SSCP's report, I believe four actions should be taken to prevent the terrible mistakes in the CIA's RDI program from ever happening again.

- (1) *Outlaw waterboarding of detainees once and for all.* President Obama implemented this policy when he took office by signing Executive Order 13491, which requires all government agencies, not just the Department of Defense, to adhere to the techniques in the Army Field Manual 2-22.3. Codifying this prohibition would make this restriction even more explicit than the Detainee Treatment Act of 2005. I voted in favor of the Fiscal Year 2008 Intelligence Authorization Act in February 2008, which would have restricted the interrogation techniques employed by CIA personnel to only those covered in the Army Field Manual. Unfortunately, this legislation was vetoed on March 8, 2008.
- (2) *Reduce the number of programs now shared exclusively with the Gang of Eight, which consists of the Chairman and Vice Chairman of the intelligence committees and the leadership of both chambers of Congress, so more member of the oversight*

committees have access to significant information. Congress was informed about the RDI program to the bare minimum required by the National Security Act and no further. Most members of the intelligence committees, not to mention the rest of Congress, officially learned about the program on the same day President Bush announced it to the world in September 2006. In this case, adherence to the letter of the law rather than the spirit of the law resulted in insufficient oversight. As former CIA attorney John Rizzo has said:

The decision in 2002 to limit congressional knowledge of the EITs to the Gang of 8 and to stick to that position for four long years—as the prevailing political winds were increasingly howling in the other direction—was foolish and feckless... For our part, we in the CIA leadership should have insisted at the outset that all members of the intelligence committees be apprised of all the gory details all along the way, on the record, in closed congressional proceedings.

- (3) *Strengthen the review process at the Department of Justice (DOJ) Office of Legal Counsel (OLC) for legal opinions concerning sensitive intelligence activities.* The Intelligence Community (IC) requires and deserves to have confidence that OLC can produce valid, durable legal analysis upon which it can rely. At the same time, the IC needs to inform OLC if material facts related to sensitive programs that have previously been reviewed have changed.
- (4) *Improve CIA controls in the management of covert action.* The unauthorized use of EITs beyond those approved by DOJ OLC, along with the many shortcomings in CIA's management of the RDI program, require CIA to implement greater and more detailed controls regarding sensitive programs.

(U) My vote to declassify this report does not signal my endorsement of all of its conclusions or its methodology. I do believe, however, that the Executive Summary, and Additional and Minority Views, and the CIA's rebuttal should be made public with appropriate redactions so the American public can reach their own conclusions about the conduct of this program. In my judgment, the "enhanced interrogation techniques" led, in some instances, to inhumane and brutal treatment of certain individuals held by the United States government.